

**DRAFT: Judicial Cases Involving State Obligations under Medicaid and the ADA to Provide Residential Home and Community-Based Services for Medicaid Beneficiaries<sup>1</sup>**

Case and Judicial Circuit	Resolution	Enforceable Right	Eleventh Amend. Sovereign Immunity	Entitlement Status of Waiver Services	Reasonable Promptness	Freedom of Choice	EPSDT / Amount, Duration and Scope	Procedural Due Process	Budgetary Defense
Boulet v Celluci 2000WL 1030398 ( MA, 1 <sup>st</sup> Cir.)	For Plaintiffs <sup>2</sup>	√ <sup>3</sup>	√ <sup>4</sup>	√ <sup>5</sup>	√ <sup>6</sup>	√ <sup>7</sup>			√ <sup>8</sup>
Cramer v Chiles 33 F. Supp. 2d 1342 (FL. 11 <sup>th</sup> Cir., 1999)* <sup>9</sup>	For Plaintiffs <sup>10</sup>	√ <sup>11</sup>	√ <sup>12</sup>		√ <sup>13</sup>	√ <sup>14</sup>		√ <sup>15</sup>	√ <sup>16</sup>
Doe v Chiles 136 F. 3d 709 (11 <sup>th</sup> Cir, 1998)	For Plaintiffs <sup>17</sup>	√ <sup>18</sup>	√ <sup>19</sup>	√ <sup>20</sup>	√ <sup>21</sup>				√ <sup>22</sup>
Lewis v New Mexico Dept of Health 94 F. Supp. 2d 1217 (NM, 10 <sup>th</sup> Cir, 2000) * <sup>23</sup>	For Plaintiffs <sup>24</sup>	√ <sup>2526</sup>	√ <sup>2728</sup>		√ <sup>29</sup>			√ <sup>30</sup>	
Benjamin v Ohl (WV, 4 <sup>th</sup> Cir., 1999)* <sup>31</sup>	For Plaintiffs <sup>32</sup>	√		√	√ <sup>33</sup>	√ <sup>34</sup>	√ <sup>35</sup>	√ <sup>36</sup>	√ <sup>37</sup>

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King v Sullivan 776 F. Supp. 645 (RI, 1 <sup>st</sup> Cir., 1991)	For Defendants <sup>38</sup>				√	√ <sup>39</sup>	√ <sup>40</sup>		
King v Fallon 801 F. Supp. 925 (RI, 1 <sup>st</sup> Cir., 1992)	For Defendants <sup>41</sup>				√ <sup>42</sup>	√ <sup>43</sup>	√ <sup>44</sup>	√	<sup>45</sup>
McMillan v McCrimon 807 F. Supp. 475 (IL, 7 <sup>th</sup> Cir., 1992)	For Plaintiffs <sup>46</sup>			√ <sup>47</sup>	√				<sup>48</sup>
Sobky v Smoley 855 F. Supp. 1123 (CA, 9 <sup>th</sup> Cir., 1994)	For Plaintiffs <sup>49</sup>	√ <sup>50</sup>		√ <sup>51</sup>	√ <sup>52</sup>			√ <sup>53</sup>	√ <sup>54</sup>
Rodriguez v City of New York 197 F. 3d 611 (NY, 2d Cir., 1999)*	For Defendants <sup>55</sup>						√ <sup>56</sup>		√ <sup>57</sup>

Legend: \* = ADA claims also raised

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**Endnotes**

<sup>1</sup> Does not include cases challenging restrictions on eligibility criteria for home and community based services; plaintiffs represented in these cases meet eligibility standards for relevant services.

<sup>2</sup> Plaintiffs, adults with mental retardation and developmental disabilities, who had spent years on waiting list, were entitled to residential and community services under State plan within 90 days, to the extent available. State given leave to put forth alternative schedule to reflect availability.

<sup>3</sup> Court finds that statute meets standard for enforceable right because Congress clearly intended to benefit the plaintiff class, the right is not vague and is capable of measurement and enforceability, and the obligation creates a binding mandate on the States that participate in Medicaid.

<sup>4</sup> Court rejects defendant's sovereign immunity claim where requested Medicaid relief is for prospective action under Federal law. (Court also finds that unlike the Age Discrimination in Education Act, which was the subject of *Kimel v Florida Board of Regents*, 120 U.S. 631 (2000), the ADA was a valid exercise of Congressional power to abrogate State sovereign immunity because of its clear intent to abrogate immunity, clear history of evidence of discrimination against persons with disabilities, and an intention to create a statutory right of action to remedy what also would be constitutional wrongs).

<sup>5</sup> Court finds that reasonable promptness standard covers waiver services enumerated in State plan. Court finds that waiver services are part of the Medicaid entitlement once added to the State plan and therefore that the same reasonable promptness standard applies to these services as to any State plan services.

<sup>6</sup> Court determines the reasonable promptness requirement applies to actual provision of medical assistance services and not only to determination of eligibility or furnishing evidence of coverage and thus gives rise to an obligation to actually furnish services within a reasonable time period, as determined by relevant evidence.

<sup>7</sup> Federal home and community care regulations as well as the statute require states that cover residential home and community services under their State plans offer individuals who require ICF/MR services feasible alternatives.

<sup>8</sup> Rejected. Where State plan identifies residential habilitation services in its plan for individuals meeting the eligibility criteria and does not limit the residential settings to individuals' own homes or those of their parents, State has an obligation to furnish the services it identifies (including residential care), at least up to the cap that it may permissibly place on such services, regardless of whether FFP may be available for the room and board component of such services.

<sup>9</sup> Decided before the Supreme Court decision in *Olmstead*; court holds that the underfunding of the community service program compels institutionalization and thus compels institutionalization, thereby violating the ADA's most integrated setting requirement. Court finds that neither economics nor administrative convenience can justify segregation.

<sup>10</sup> Court finds that plaintiffs, children and adults with developmental disabilities who were given the choice of large State institutions or long waiting lists for community services and who desire both institutional and community services, are entitled under Federal Medicaid law to choose between institutional care and home and community services covered under the State Medicaid plan. Court further finds that the State cannot reduce its State plan below reasonable levels by simultaneously cutting institutional services below reasonable levels and failing to make sufficient community services available.

## **DRAFT**

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<sup>11</sup> See FN 3.

<sup>12</sup> See FN 4.

<sup>13</sup> Court finds that while the State has the authority to shift services into community setting, current funding levels are inadequate to ensure that services will be furnished with reasonable promptness, thus extending reasonable promptness requirement to both eligibility determinations and the actual sufficiency of care.

<sup>14</sup> Court finds that State's failure to adequately support either waiver or ICF services leaves individuals without any real freedom of choice regarding the services they can receive and that the State's reduction of its institutional services and concomitant failure to adequately fund community services violated the choice requirement.

<sup>15</sup> Court finds that State's termination of plaintiffs' private ICF services without notice or hearing and its failure to maintain services at adequate levels pending a hearing violated due process requirements.

<sup>16</sup> State budgetary defense cannot justify failure to fund its Medicaid plan. Furthermore, the State's failure to adequately fund the plan with respect to the provision of home and community services for persons with disabilities may constitute a violation of Title II of the ADA because of its effects on the State's most integrated setting obligations.

<sup>17</sup> Court finds that plaintiffs, children and adults with mental retardation and developmental disabilities, have enforceable right to ICF services covered under the state plan within 90 days of a request for services.

<sup>18</sup> See FN 3. Court finds that plaintiffs show a legal right of the type that is enforceable under 42 U.S.C. §1983 in that the Medicaid statute creates a binding obligation on the part of participating States to furnish certain services rather than a mere Congressional expectation or preference for the service. Court also finds that the obligation to furnish a reasonable level of care is neither vague nor amorphous given the structure of the statute and that enforcement would not strain judicial competence. Court rejects defendant's argument that providers rather than individuals are the intended beneficiaries of Medicaid coverage requirements.

<sup>19</sup> See FN 4.

<sup>20</sup> See FN 5.

<sup>21</sup> See FN 6. Requirement extends to the service as well as the eligibility determination. As a result, a 90-day service requirement is reasonable for services that are enumerated in the plan and tailored to solving the problem of long waits without telling the State how to do so.

<sup>22</sup> See FN 8. State cannot defend with budgetary constraints where its Medicaid plan covers the service sought, although the State retains the right to terminate certain services or its Medicaid participation entirely.

<sup>23</sup> Court finds that, consistent with *Olmstead*, the failure to furnish community services covered under the State Medicaid plan may violate the ADA most integrated setting requirement and that such failure constitutes discrimination. Court also finds that the issue of the cost of the care sought is a consideration in the remedial phase, not a bar to the right to seek a remedy.

<sup>24</sup> Plaintiffs, Medicaid beneficiaries who are elderly or who have disabilities and the state's Protection and Advocacy Agency, are permitted to proceed with their claims against the State regarding the State's failure to provide them with the Medicaid home and community based waiver services to which they allege that they are entitled. Individual plaintiffs are residents of institutions who have been on waiting lists for up to 7 years.

<sup>25</sup> See FN 3.

## **DRAFT**

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<sup>26</sup> Court also finds that unlike the Age Discrimination in Education Act, which was the subject of *Kimel v Florida Board of Regents*, 120 U.S. 631 (2000), the ADA was a valid exercise of Congressional power to abrogate State sovereign immunity because of its clear intent to abrogate immunity, clear history of evidence of discrimination against persons with disabilities, and an intention to create a statutory right of action to remedy what also would be constitutional wrongs.

<sup>27</sup> See FN 4.

<sup>28</sup> Court also finds that despite the fact that the ADA prohibits discrimination by “public entities,” the litigation has properly been brought against individual officials and falls into the prospective injunctive relief exception to the bar against damages actions by individuals against States under the Eleventh Amendment. Court further finds that the most integrated setting requirements of ADA Title II are mandatory and not an exercise of official discretion.

<sup>29</sup> See FN 5 and FN 6.

<sup>30</sup> Court finds that plaintiffs have a constitutional interest in procedural due process in the application for benefits, regardless of whether they can claim substantive due process violations for failure to actually furnish services.

<sup>31</sup> While ADA claims were raised, they were not decided by the Court.

<sup>32</sup> Plaintiffs, children and adults with mental retardation and developmental disabilities who are eligible for ICF/MR services but prefer community services covered under the State plan, are entitled to have an eligibility determination for such services within 90 days of their application, and are entitled to procedural safeguards as part of the application process, including the availability of applications, the ability to apply in accessible locations, assistance in applying, and procedural due process (i.e., a fair hearing) if an application is denied or not acted upon in a timely fashion. Out of 1869 slots, State had filled 1779 as of the time of the case, and evidence was presented that local behavioral health centers were failing to allow people to apply and that the State was placing limits on the applications that it would permit. Court requires defendants to take affirmative steps to ensure accessibility of services in the event that movement off the waiting lists slows beyond 90 days.

<sup>33</sup> See FN 6.

<sup>34</sup> See FN 7.

<sup>35</sup> Court also finds that where the State covers ICF/MR services it either must furnish the services in an appropriate amount, duration, and scope, or make alternative services available that meet the depth and range of health care needs required of individuals who are in need of ICF/MR services. Evidence presented that each child plaintiff in the case was receiving some community care but less than the amount required.

<sup>36</sup> Court found that the State lacked application policies and procedures and that the application centers actually discouraged individuals from making an application because they thought that they did not have sufficient money either to cover more eligible beneficiaries or add services for persons whose level of care under the waiver was inadequate.

<sup>37</sup> See FN 8.

<sup>38</sup> Pre-*Olmstead* decision. Court finds no violation in State’s failure to fund sufficient small residential placements for plaintiffs, persons in need of ICF/MR services for persons with mental retardation and developmental disabilities. Plaintiffs failed to show that small residential placements were appropriate for them or that State failed to offer services.

## **DRAFT**

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<sup>39</sup> Court finds that where plaintiffs fail to show that small residential homes are furnishing services to private patients while refusing to participate in Medicaid or alternatively that they are unable to secure a placement appropriate to their needs, there can be no violation of the freedom of choice statute as a matter of law.

<sup>40</sup> Because defendant offered plaintiffs placement in a large public ICF/MR, the fact that it did not have sufficient small residential placements did not prevent its plan from being reasonable.

<sup>41</sup> Pre-*Olmstead* case. Court rejects the claims of plaintiffs, adults with mental and physical disabilities, that Rhode Island is operating its program unlawfully because of its failure to sufficiently fund private and small public ICF/MR residential services in lieu of larger State facilities. Plaintiffs fail to show lack of adequate services but instead argued the lack of services of particular quality and type.

<sup>42</sup> Where the argument turned on the lack of ICF/MR services of a particular type (i.e., small residences) versus larger institutions, State did not violate reasonable promptness requirement because only large institutions were available.

<sup>43</sup> Court finds that plaintiffs failed to show violation of freedom of choice requirement simply because certain types of ICF services listed in the State plan were not available. Court further finds that freedom of choice applies only to “appropriate” services and plaintiffs failed to show that they were not given the right to choose among services appropriate to their individual needs.

<sup>44</sup> See FN 39.

<sup>45</sup> Because plaintiffs failed to show lack of any ICF/MR services and instead focused on the lack of a particular type of service (i.e., smaller residential facilities) the court did not address the issue of the sufficiency of the State’s budget.

<sup>46</sup> Pre-*Olmstead* decision. Court found that plaintiffs, persons with severe physical and mental disabilities, had right under Federal law to apply for home and community care waiver services even where the State limits on funding for such services would result in a waiting list. Court further finds that beneficiaries have a right to services with reasonable promptness and that State claim to limited resources is not a defense.

<sup>47</sup> See FN 5.

<sup>48</sup> While court did not specifically address the budgetary defense, it found that the budget neutrality of the waiver services and their restriction to persons who in the absence of waiver services would need institutional services prevented the State from arguing that the limits of its home care budget line item should justify its failure to accept and process further applications.

<sup>49</sup> Court finds that plaintiffs, beneficiaries in need of methadone maintenance services, had an enforceable right to sufficient level of services to be furnished with reasonable promptness. Certain aspects of the legal adequacy of State administration of its program through county operated treatment centers were either left undecided or decided in defendant’s favor (procedural due process claims), although court held that State could not systematically underfund the service and then force beneficiaries onto lengthy county-maintained waiting lists.

<sup>50</sup> See FN 3.

<sup>51</sup> See FN 5.

<sup>52</sup> See FN 6.

<sup>53</sup> Plaintiffs’ claims regarding the State’s fair hearing system for denials and terminations or reductions in methadone services were rejected. Provider-administered hearing system is constitutionally sufficient where State delegates aspects of the due process

## **DRAFT**

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procedure (i.e., notice) to providers and providers thus act as agents of the State. Plaintiffs made no showing that providers failed to carry out their duties or that State failed to monitor them.

<sup>54</sup> Decision makes clear that it is because of the reasonable promptness requirement of the statute that the budgetary defense fails. The court holds that once a State adds services to its State plan, they become subject to the reasonable promptness requirement and the State cannot fail to provide adequate funding to meet this obligation.

<sup>55</sup> Court holds that the State's failure to include safety monitoring services as a separate personal care benefit and not merely as an incident to other personal care services violated neither the Medicaid statute nor the ADA in the case of persons whose mental disabilities required safety monitoring only but no other personal care services.

<sup>56</sup> Court found that the State's coverage of personal services was reasonable despite absence of separate coverage for freestanding safety monitoring services not furnished as an incident to another personal care service. The court also found that the limitation was acceptable despite the anti-discrimination provision of the Medicaid coverage regulations because that provision applies only to required services, and personal care is an optional service. Record explicitly contained a letter from HCFA classifying safety monitoring alone as a service that did not qualify as a personal care service. The court further held that the ADA does not require a State to affirmatively modify or expand its Medicaid plan to include previously uncovered services or populations.

<sup>57</sup> As long as a State reasonably covers the items and services in its State plan and conforms with applicable Federal legal requirements, it may legitimately decide not to cover certain optional services without violating either the ADA or Federal Medicaid law.